

through American Water Capital Corp. (AWCC), and such other documents, agreements, instruments and indentures as may be necessary or appropriate for the proposed financing; and (c) the hiring of a financial advisor as Petitioner may deem necessary or appropriate to advise and assist Petitioner in connection with one or more of the offerings contemplated hereby; and

3. Carry out all of the foregoing without further order of the Board of Public Utilities.

The terms and conditions of the Long Term Debt, including purchase price, interest rate, maturity date, sinking fund provisions, if any, and redemption provisions, if any, will be established by the results of the competitive bidding or competitive circumstances at the time of sale in light of then existing market conditions.

The Long Term Debt issued through and in conjunction with the EDA will be issued under and subject to the Mortgage Indenture and will be secured equally and ratably with all of Petitioner's bonds issued and outstanding under the Indenture which creates a lien on substantially all of the Petitioner's property. The security provided for Trust Fund loans will be as required by the Trust Fund. Taxable issuances through and in conjunction with AWCC will be unsecured. Any tax-exempt issuance through and in conjunction with AWCC would most likely be in connection with an EDA issuance and therefore would be secured.

Petitioner states that the proceeds from the sale of the Long Term Debt will be used to:

- a) Provide funds for Petitioner's ongoing utility plant construction program;
- b) Refund outstanding long-term debt of Petitioner as such debt matures or is retired;
- c) Repay short-term debt;
- d) Provide funds for acquisitions of assets; and
- e) Pay certain issuance costs of the proposed financings.

Petitioner further states that proceeds from any approved Trust Fund applications(s) will be used for the purpose(s) set forth in such approved application(s). Petitioner further states that the utility plant construction program is necessary for Petitioner to maintain adequate supply, treatment and distribution of water to meet the demand for service, and to assure continuing compliance with increasing water quality as well as water and wastewater environmental regulatory requirements.

Petitioner intends to offer and sell Long Term Debt through competitive bidding or under circumstances where competitive conditions for the offering and sale would be maintained throughout. It is expected that Petitioner will select the type, principal amount and other terms of the securities to be offered based upon market conditions at the time Petitioner requires long-term capital. Petitioner believes that it would be in the best interest of its customers to have the flexibility to issue and sell its long-term securities on terms which are expected to result in the lowest cost of funds for Petitioner. Depending upon then-existing market conditions, Petitioner will determine the principal amount to be offered for sale, the type of security to be offered, and whether such rates are fixed, variable or convertible, and the other terms of the securities to be offered. Petitioner plans to use the marketing and offering structure which is customary for the offering of long-term securities.

The interest rate and other terms of any loans obtained from the Trust Fund will be determined through an offering of Trust Fund bonds that would include the amounts requested by Petitioner in applications approved by the Trust Fund. The interest rate for Trust Fund loans are based on one-half the project cost at 0% and one-half the project cost at market rate plus any reserve capacity costs financed by the Trust Fund at the request of the borrower.

Petitioner proposes to obtain any taxable issuances through and in conjunction with AWCC either through private placement offerings or offerings in the public debt market. Petitioner is also preparing to utilize AWCC in conjunction with the issuance of tax-exempt bonds through the EDA provided that AWCC's involvement in any such transaction does not result in increased financing costs to Petitioner. On August 16, 2000, the Board issued an Order, in Docket No. WF00040252 (August 2000 Order), approving the Financial Service Agreement (FSA) between AWCC and Petitioner. AWCC is currently providing short-term credit facilities to the Petitioner, as well as cash management services. The FSA and the August 2000 Order contemplated that AWCC would also provide long-term financing to the Petitioner. However, the Order required that the Petitioner obtain approval for long-term financings under the FSA when Petitioner renewed its regular long-term financing program. Petitioner is now seeking that approval.

A sale of Long Term Debt that is long-term and fixed rate, in conjunction with the concurrent sale of a like principal amount of tax-exempt bonds would be conducted by a public offering with competitive bidding through the EDA or other tax exempt funding source such as the Trust Fund. The interest rate and other terms of any Long Term Debt issuances in conjunction with the EDA would be determined by the terms obtained on the EDA issuance.

However, depending upon market conditions and other factors, Petitioner may be able to obtain a lower cost of funds for the issuance of taxable (or tax exempt) bonds by offering the securities with a variable or floating rate of interest convertible by Petitioner into a fixed rate at a later time. Variable and floating rate long-term debt is typically sold into a very competitive market consisting primarily of mutual funds and institutional investor. The market for variable rate bonds is generally viewed as having greater liquidity and, hence, market conditions are extremely competitive even though competitive bidding, per se, is not the generally accepted manner of sale. The initial interest rate of such securities is based upon the spread over U. S. Treasury securities of bonds having comparable maturities and credit worthiness and is determined by the market interest rate at the time of sale rather than direct competitive bidding.

The financing program for which Petitioner is seeking Board authorization is similar to the financing program for which Petitioner received Board approval in Docket No. WF98020078 by Order dated May 5, 1998. Petitioner is seeking Board authorization for the financing program so that it can have the flexibility to take advantage of favorable market conditions for Petitioner's securities as opportunities arise without obtaining further approval of the Board. These opportunities often develop with little or no advance notice and are frequently of only short duration. By granting Petitioner the authority it seeks, Petitioner will be in the best position to attain the lowest cost of funds available as long-term debt and equity capital is required by Petitioner.

Petitioner requests authorization to issue and sell the Long Term Debt without further approval by the Board of the specific terms and conditions under the procedures described herein which constitute competitive conditions. Petitioner proposes to proceed with such issuance and sale as long as:

- a) At least three independent bid proposals are solicited for the securities being offered through competitive bidding;
- b) In the case of securities offered through an agent or underwriter where the interest rate is established by the market on the date of sale (such as a sale of variable rate bonds with short-term rates or taxable offerings through AWCC to the public debt market), the Petitioner's marketing agent solicits independent proposals at the market rate for such securities; and
- c) The accepted bid(s) or proposal(s) received in competitive bidding or market conditions produces the lowest effective cost of money to Petitioner.

In the event the conditions set forth above are satisfied, Petitioner would accept the proposal which produces the lowest effective cost of money to Petitioner and would further propose to issue and sell such securities in accordance with the terms thereof, without further Order of this Board. No later than 24 hours prior to receipt of the competitive proposals received through competitive bidding or results of a market offering of long-term securities with variable or short-term interest rates, or taxable offerings through AWCC to the public debt market, as the case may be, Petitioner shall provide the Board with information as to the date and time scheduled for receipt of the bid proposals or such as the market offering. Petitioner shall also provide the Board at that time with information relating to Petitioner's then current assessment of the financial markets, including:

- I. Recent sales of comparable utility securities issues, if any;
- II. Yields on outstanding comparable utility securities issues; and
- III. Other relevant information needed to assess the reasonableness of the effective costs of funds.

As soon as practicable following acceptance of any proposal resulting in the issuance and sale of any Long Term Debt hereunder, Petitioner shall submit to the Board the terms of the accepted proposals as well as the respective terms of each of the other proposals received (or the relevant market information for an offering of long-term securities with variable or short-term interest rates of taxable offerings through AWCC to the public debt market at the time of market offering), including the interest rates, the prices to be paid, and the effective costs of funds to Petitioner under each proposal.

In a letter dated July 27, 2001, the Division of the Ratepayer Advocate states it "...is not opposed to approval of the petition" and suggests the inclusion of certain conditions in the order. The conditions addressed in the Ratepayer Advocate's letter are included in this order.

The Board, after investigation, and having considered the petition and the exhibits and supplemental information submitted in this proceeding, is satisfied with the actions proposed to be taken by Petitioner as indicated above, and FINDS that the transactions to be made are in accordance with law, and in the public interest. Approving the purposes thereof, the Board HEREBY AUTHORIZES Petitioner to: (1) issue and sell in one or more offerings from time to time and not later than December 31, 2002 long-term debt in an aggregate principal amount of not more than \$100,000,000 consisting of one or more series of Long Term Debt, and (2) take

such other action as Petitioner may deem necessary or appropriate in connection with the proposed plan of financing contemplated by the petition, including (a) the making, execution and delivery of one or more supplemental mortgage indentures to Petitioner's Original Indenture, (b) the making, execution and delivery of one or more underwriting agreements, official statements, bond purchase agreements, remarketing agreements and repurchase agreements (in the case of variable rate securities), loans and security agreements and indentures in connection with financings through the EDA, the Trust Fund, or such other tax-exempt funding source, and such other documents, agreements, instruments and indentures as may be necessary or appropriate for any proposed financing, and (c) the hiring of a financial advisor as Petitioner may deem necessary or appropriate to advise and assist Petitioner in connection with one or more of the offerings contemplated hereby.

The Board HEREBY AUTHORIZES Petitioner to carry out all of the transactions requested in the petition without further order of the Board, so long as Petitioner complies with the following conditions:

1. Petitioner shall solicit at least three independent bid proposals for the securities being offered through competitive bidding, or, in the case of securities offered through an agent or underwriter where the rate is established by the market on the date of sale (such as a sale of variable rate bonds with short-term rates of taxable offerings through AWCC to the public debt market), the Petitioner's marketing agent solicits independent proposals at the market rate for such securities; and
2. The accepted bid proposal(s) received under competitive conditions shall produce the lowest effective cost of money to Petitioner.

The Board FURTHER ORDERS Petitioner to comply with the following provisions:

1. Petitioner shall provide the Board with the following material, to the extent available, as soon as it is available and in no event later than twenty-four (24) hours prior to receipt of the competitive bid proposals or results of a market offering of long-term securities with variable or short-term interest rates, as the case may be: (i) information as to the date and time scheduled for the receipt of the bid proposals or other relevant market information for an offering of long term securities with variable or short-term interest rates or in the public debt market at the time of market offering; and (ii) information relating to Petitioner's then current assessment of the financial markets, including (a) recent sales of comparable utility securities issues, if any, (b) yields on outstanding comparable utility securities issues, and (c) other relevant information needed to assess the reasonableness of the effective cost of funds.
2. Petitioner shall, as soon as practicable following acceptance of any proposal resulting in the issuance and sale of any Long Term Debt hereunder, submit to the Board the terms of the accepted proposals as well as the respective terms of each of the other proposals received (or the relevant market information for an offering of long-term securities with variable or short-term interest rates or taxable offerings through AWCC to the public debt market at the time of market offering), including the interest rates, the prices to be paid, and the effective costs of funds to Petitioner under each proposal.

3. This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever any value of the tangible or intangible assets now owned or hereafter to be owned by the Petitioner; nor as certifying that the securities authorized to be issued and sold will be represented by tangible or intangible assets or commensurate value or investment costs.
4. This Order shall not affect nor in any way limit the exercise of the authority of this Board or of the State in any future proceeding with respect to rates, franchises, services, financing (including method of sale of securities), accounting, capitalization or any other matters affecting Petitioner.
5. The authority granted in this Order shall become null and void and of no effect with respect to any portion thereof which has not been exercised by December 31, 2002.

Petitioner is directed to comply with all of the provisions of N.J.A.C. 14:11-1.7.

DATED: August 1, 2001

BOARD OF PUBLIC UTILITIES
BY:

[SIGNED]

CONNIE O. HUGHES
ACTING PRESIDENT

[SIGNED]

FREDERICK F. BUTLER
COMMISSIONER

[SIGNED]

CAROL J. MURPHY
COMMISSIONER

ATTEST:

[SIGNED]

FRANCES L. SMITH
BOARD SECRETARY